

ASSEMBLY BILL

No. 204

Introduced by Assembly Member Baldwin

January 21, 1999

An act to amend Section 311.1 of the Penal Code, relating to obscene matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 204, as introduced, Baldwin. Obscene matter.

Under existing law, every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, with the intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct is guilty of a felony or a misdemeanor. Existing law provides that this provision does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses.

This bill would provide that discovery of obscene matter in cases involving any violation of this provision shall be limited to viewing of the obscene matter in the presence of a court-appointed security officer or the law enforcement agency having possession of the obscene matter. The bill also would provide that defense counsel and their paralegals,

investigators, and expert witnesses shall be allowed to view the obscene matter in private, but in no instance shall any copy or duplicate be made of the obscene matter.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 311.1 of the Penal Code is
2 amended to read:

3 311.1. (a) Every person who knowingly sends or
4 causes to be sent, or brings or causes to be brought, into
5 this state for sale or distribution, or in this state possesses,
6 prepares, publishes, produces, develops, duplicates, or
7 prints any representation of information, data, or image,
8 including, but not limited to, any film, filmstrip,
9 photograph, negative, slide, photocopy, videotape, video
10 laser disc, computer hardware, computer software,
11 computer floppy disc, data storage media, CD-ROM, or
12 computer-generated equipment or any other
13 computer-generated image that contains or incorporates
14 in any manner, any film or filmstrip, with intent to
15 distribute or to exhibit to, or to exchange with, others, or
16 who offers to distribute, distributes, or exhibits to, or
17 exchanges with, others, any obscene matter, knowing
18 that the matter depicts a person under the age of 18 years
19 personally engaging in or personally simulating sexual
20 conduct, as defined in Section 311.4, shall be punished
21 either by imprisonment in the county jail for up to one
22 year, by a fine not to exceed one thousand dollars
23 (\$1,000), or by both the fine and imprisonment, or by
24 imprisonment in the state prison, by a fine not to exceed
25 ten thousand dollars (\$10,000), or by the fine and
26 imprisonment.

27 (b) This section does not apply to the activities of law
28 enforcement and prosecuting agencies in the
29 investigation and prosecution of criminal offenses—~~or~~
30 *Discovery of obscene matter in cases involving any*
31 *violation of this section shall be limited to viewing of the*
32 *obscene matter in the presence of a court-appointed*

1 *security officer or the law enforcement agency having*
2 *possession of the obscene matter. Defense counsel and*
3 *their paralegals, investigators, and expert witnesses shall*
4 *be allowed to view the obscene matter in private, but in*
5 *no instance shall any copy or duplicate be made of the*
6 *obscene matter.*

7 *(c) This section does not apply to legitimate medical,*
8 *scientific, or educational activities, or to lawful conduct*
9 *between spouses.*

10 ~~(e)~~

11 *(d) This section does not apply to matter which*
12 *depicts a child under the age of 18, which child is legally*
13 *emancipated, including lawful conduct between spouses*
14 *when one or both are under the age of 18.*

15 ~~(d)~~

16 *(e) It does not constitute a violation of this section for*
17 *a telephone corporation, as defined by Section 234 of the*
18 *Public Utilities Code, to carry or transmit messages*
19 *described in this chapter or perform related activities in*
20 *providing telephone services.*

